


City of Alexandria, Virginia

MEMORANDUM

DATE: AUGUST 15, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: PHILIP SUNDERLAND, CITY MANAGER 

SUBJECT: DUKE STREET CONCOURSE

This memorandum (i) provides a brief update on the status of the Duke Street concourse, (ii) summarizes the additional mitigation measures and requirements that the party responsible for the concourse, the Carlyle Development Corporation, will undertake because of its failure to deliver the concourse by the end of this year, and (iii) addresses the question whether the City should prohibit the occupancy of any U.S. Patent and Trademark Office buildings until construction of the concourse has been completed.

On June 23, 2003, we forwarded a memorandum to the Mayor and Council that addressed the requirement in the Carlyle Special Use Permit for the construction of a concourse, or tunnel, which would run under Duke Street approximately between Dulany Street and Diagonal Road, that explained the history of this concourse project and the progress that had been and not been made, that relayed the notification given by the Carlyle Development Corporation (CDC) that the concourse would not be completed by the SUP due date of December 31, 2003, and that described the measures that CDC had committed to undertake regarding the construction of the concourse and measures to mitigate the impacts that may follow its delayed opening. A copy of that memorandum is attached.

Since that memorandum was prepared, CDC has submitted a revised set of concourse plans for review by City staff. Also, CDC is now distributing construction plans to contractors for bidding, and anticipates that a construction contract will be awarded on September 15, 2003. Under its current construction schedule, CDC intends to open the concourse to pedestrian traffic, as a "soft opening," in mid-April 2004. This "soft opening" will allow pedestrians to use the concourse, while additional finish work is being completed. CDC has committed to complete the concourse construction, so it is ready for City acceptance, by June 30, 2004.

Because CDC will not meet the December 31, 2003, concourse "due date," and because the U.S. Patent and Trademark Office (PTO) will start occupying the first building of its new campus at

the end of December 2003,¹ staff has required CDC to provide several mitigation measures and to meet several other requirements. CDC has agreed to provide these measures and to meet these requirements. They are as follows:

First, CDC will provide a special shuttle service, Monday through Friday, from the King Street Metro Station to the PTO campus. This shuttle service will be designed to achieve a five minute headway between shuttles during peak periods. This service will continue until the opening of the concourse; it will then be adjusted to comply with the requirements of the Carlyle Traffic Management Plan SUP.

Second, CDC will provide special bus shelters at the PTO campus to accommodate the PTO employees who use this five-minute-headway shuttle service.

Third, CDC will implement a public information program, including publication of a brochure, to educate PTO employees about transit opportunities, the availability of federally-provided transit subsidies, the five-minute-headway shuttle service, the status of the concourse construction, and safe pedestrian routes. This program will be start no later than the beginning of December 2003.

Fourth, CDC will perform a traffic and pedestrian analysis of the Duke Street corridor to identify changes to intersection signal timings and other measures that will need to be made to facilitate the substantial pedestrian crossings across Duke street which will occur prior to the opening of the concourse. Following the analysis, CDC will implement the identified changes and measures.

Fifth, in order to channel pedestrians crossing Duke Street and to provide for safe crossings, CDC will construct temporary physical barriers (of a size and appearance approved by the City) along Duke that will prevent pedestrians from crossing other than at appropriate locations. CDC will also provide necessary and appropriate signage and pavement markings as approved by the City. Most, if not all, of these measures will be removed once the concourse is open.

¹ PTO employees are scheduled to begin moving into the first two PTO buildings in early to mid-December 2003. Approximately 1,305 employees will occupy one building (located at the northeast corner of the campus), and 1,055 employees will occupy the other (just south of the first). Complete occupancy of these buildings is expected to occur by mid-February 2004, or about eight weeks before the anticipated "soft opening" of the concourse. The next phase for the occupancy of PTO buildings is scheduled to start in the fall of 2004.

In addition to the two office buildings, one of the two PTO garages (along the eastern side of the campus) will be completed in October 2003. This garage contains approximately 1,725 spaces. The other parking garage, along the western side of the campus, will be completed in July 2004.

Sixth, CDC will provide funding for a special City inspection process that will enable the City to have a permanent presence at the concourse construction site. This will allow the City to expedite the processing of permits, to answer questions and monitor construction, and generally to ensure that the construction remains on schedule.

Seventh, CDC will pay a penalty to the City in the amount of \$5,000 for each day after July 1, 2004, that the concourse remains not completed and not accepted by the City. (Also, CDC will include provisions in its concourse construction contract that require its contractor to pay financial penalties to it, CDC, for delays in the concourse construction.)

Some individuals have questioned whether the City should prohibit PTO from occupying any of its buildings until construction of the concourse under Duke Street has been completed, and whether such a prohibition is necessary to preserve the "integrity" of the SUP process.

Were PTO, or LCOR which is the party constructing the PTO campus and leasing the buildings to PTO, responsible for the construction of the concourse and the "holder" of the SUP concourse requirement, I would agree that consideration should be given to barring occupancy of the PTO buildings until the concourse is completed and accepted by the City. Here, however, it is an entirely different party, CDC, that is, in the first instance, responsible for the concourse construction and the "holder" of the SUP concourse requirement.

Practically all of the infrastructure requirements in the Carlyle SUP are imposed in the first instance on CDC, as the initial owner of the land in Carlyle and the original SUP applicant, and not on the actual developer of a particular block or parcel within Carlyle or the tenant who might occupy the developed space. In acquiring land in Carlyle and paying a purchase price to CDC, LCOR (and indirectly PTO) has in effect already paid for the construction -- indeed, for the timely construction -- by CDC of the concourse and other SUP-required infrastructure within and adjacent to the Carlyle community. In addition, since they lack any primary responsibility for the concourse construction, LCOR and PTO are not in any sense at fault in the delay of this construction. Thus, to now penalize LCOR and PTO for the failure of CDC to deliver the concourse on time would not be consistent with the structure of the Carlyle SUP, with the financial transactions already engaged in by LCOR and PTO, with the absence of any "fault" on the part of these parties, or with their reasonable reliance that CDC would meet its SUP obligations.

For these reasons, I do not believe it appropriate that the City prohibit PTO from occupying any of its buildings until the concourse under Duke Street is completed; nor, importantly, do I believe that such a prohibition is necessary to preserve the "integrity" of the Carlyle SUP or, more generally, of the City's SUP process.

We would be pleased to answer any questions you may have regarding this subject. If you have any, please give me or Rich Baier a call.

Attachment


cc: Richard J. Baier, Director, T&ES
Tom Culpepper, Deputy Director of T&ES
Emily Baker, City Engineer
Arthur Dahlberg, Director, Code Enforcement
Eileen Fogarty, Director, Planning & Zoning

City of Alexandria, Virginia

MEMORANDUM

DATE: JUNE 23, 2003

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

THROUGH: PHILIP SUNDERLAND, CITY MANAGER 

FROM: RICHARD J. BAIER, P.E., DIRECTOR
TRANSPORTATION & ENVIRONMENTAL SERVICES

SUBJECT: DUKE STREET CONCOURSE

On March 21, 2000, City Council approved an amendment to the Carlyle Special Use Permit condition that requires Carlyle Development Corporation (CDC) to construct a pedestrian tunnel, by December 31, 2003, under Duke Street from the west side of Dulany Street to the north side of the Duke Street right-of-way. The condition reads as follows:

A pedestrian tunnel under Duke Street from the west side of Dulany Street to the west side of Diagonal Road and related items shall be designed and constructed, or in the case of some related items reconstructed, by the applicant at its sole expense to the satisfaction of the Directors of T&ES and P&Z. The related items shall consist of adjoining sidewalks, medians and the plaza at the Crescent Park, as well as lighting, gates, signage, security features and a kiosk or similar structure. No construction north of Duke Street shall be required except the minimum necessary to connect with the north side of the Duke Street right-of-way. Construction of the tunnel shall be completed by December 31, 2003, unless the U.S. Patent and Trademark Office relocation to Carlyle does not proceed, in which case the construction of the tunnel shall be completed by a date to be determined by City Council. Upon completion of construction of the tunnel and acceptance of the tunnel by the City, the City shall assume full responsibility for the tunnel, including all maintenance and liability, except that CDC and its successors or assigns acceptable to the City shall be responsible, at its or their sole expense, for providing cleaning/custodial services for the tunnel and for the costs to provide security for the tunnel. The City Manager shall determine the type and extent of security to be provided in the tunnel. The City Manager shall also determine the hours of operation for the tunnel. Funds for tunnel security may come from the TMP account for Carlyle, to the extent such funds are not otherwise obligated under paragraph 2 of the TMP.

In August 2000, the Carlyle/PTO Task Force appointed a Traffic Subcommittee to evaluate the tunnel concept and make recommendations on architectural character and opportunities for public art to the Carlyle Design Review Board. The committee renamed the tunnel a concourse

to avoid the negative connotations associated with a below grade crossing. The Task Force informed CDC that it was anxious to meet with CDC's designers, as soon as they were selected.

In the summer of 2000, the City was informed by CDC that a traditional design-bid-build type of contractual arrangement was to be implemented for the concourse. This refers to a stand-alone design contract being issued for the architectural and engineering services. Then the plans that are developed under that contract are bid, and a separate construction contract is awarded.

The City was subsequently informed that CDC had decided to switch to a design-build type of contract. This refers to one contract being issued to a team including both design and construction services. In March 2001, City staff met with CDC to review constructibility issues and constraints that would be included in that contract. City staff expressed concern at that time that a contract had still not been awarded. Staff were given a schedule indicating that construction of the concourse would begin in February 2003 and be completed by November 2003. Following this meeting, staff was periodically reassured that the project was progressing.

In December 2001, City staff met with the designers selected by CDC and learned that CDC had reverted back to a design-only contract. Staff reviewed the project with the designers, and CDC was asked to make a presentation to the next meeting of the Task Force.

In January 2002, City staff met with WMATA staff to review the physical and regulatory constraints associated with constructing the concourse in close proximity to WMATA's existing infrastructure. In March 2002, CDC submitted preliminary plans to the City for review. Meetings were held between City staff and the CDC designers in April, May and June 2002 which involved coordination with WMATA and Dominion Virginia Power. This coordination is necessary because WMATA will be constructing the sidewalk connection for the City to meet the north side of the concourse and because CDC's contractors must receive approval from WMATA to work adjacent to the Metro tracks. In addition, Dominion Virginia Power owns an electrical duct bank which runs under Duke Street and provides the power for the King Street Metro Station. This duct bank currently lies within the alignment of the proposed concourse and must be relocated by CDC. LCOR was also involved in the coordination, as LCOR is required to provide intersection improvements on Duke Street in the vicinity of the concourse. At the May 2002 meeting, the City was given a schedule for construction which indicated that the final construction plans would be complete by mid-December 2002.

In June 2002, the Carlyle Design Review Board approved the concept and architectural character of the new plaza in the park in front of Time Life, the landscaping and the concourse. In October 2002, the Design Review Board accepted the material finish details for the concourse, including the wall design for future display of public art (by others).

In December 2002, City staff had another meeting with CDC's design team, WMATA and Dominion Virginia Power. In January 2003, CDC's designer submitted several alternatives for the duct bank relocation to Dominion Virginia Power for its review and approval. Staff had

several telephone conversations with CDC, WMATA and Dominion Virginia Power in order to assist and expedite the commencement of construction.

In February 2003, a site plan for the concourse was submitted to the City for review. City staff were notified that the plans were not 100% complete, but agreed to go ahead and begin reviewing them because staff was concerned about the schedule slippage.

On April 10, 2003, CDC sent a letter to the City stating that the schedule for construction of the concourse appeared to be in serious jeopardy. Staff met with CDC and its design team in May and June to resolve all outstanding CDC plan issues and identify ways to expedite the construction. In addition, interim pedestrian safety measures were also discussed for the period between the initial occupancy of PTO and the completion of the concourse.

CDC has committed to completing the concourse by June 30, 2004. CDC also has agreed to:

- Provide shuttle service from the King Street Metro Station to the PTO campus to achieve a five minute headway during the morning and evening peak periods. This will continue until the concourse opens.
- Construct bus shelters at the PTO campus to accommodate PTO employees using the shuttle.
- Provide physical barriers to channelize pedestrians crossing Duke Street to provide for safe crossing opportunities.
- Implement a public information program, including a brochure, to educate employees commuting to Carlyle about the status of the concourse, safe pedestrian routes, and the availability of the shuttle and transit subsidies.
- Provide traffic and pedestrian analysis of the Duke Street corridor to identify potential changes to signal timing to facilitate pedestrian crossings.
- Provide funding for a special City inspection process and an inspection to oversee the expedited construction schedule.
- Pay the City a penalty in the amount of \$5,000 per day in the event the concourse is not completed and accepted by the City by June 30, 2004.

A letter from Lloyd Clingenpeel of CDC outlining these commitments is attached.

Staff will monitor the revised schedule and interim mitigation measures, and will provide regular reports at Council meetings in the fall.

Attachment

cc: Michele Evans, Assistant City Manager
Eileen Fogarty, Director, Planning & Zoning
Arthur Dahlberg, Director, Code Enforcement
Emily Baker, P.E., City Engineer



CARLYLE

Carlyle Development Corporation
110 Franklin Road, S.E.
Roanoke, Virginia 24042-0059

June 18, 2003

Philip Sunderland
City Manager
City of Alexandria
Room 3500, City Hall 301 King Street
Alexandria, Virginia 22314

Re: Duke Street Pedestrian Concourse

Dear Mr. Sunderland:

As we discussed last week, the construction of the planned pedestrian concourse under Duke Street required pursuant to condition 25 of the Carlyle Special Use Permit has been delayed and we do not expect that the facility will be completed by December 31, 2003. The delay has been caused by a variety of factors, some of which are beyond the control of Carlyle Development Corporation ("CDC"). Rather than focus on the reasons for the delay, we wish to work with the city to 1) accelerate the completion date as much as possible and 2) encourage transit usage by employees moving to Carlyle between January 1, 2004 and the completion of the pedestrian concourse. CDC has committed the funding for construction of the Duke Street Pedestrian Concourse and looks forward to working with the City toward completion as soon as possible. To accomplish these purposes, we agree to the following:

Acceleration of Construction Schedule:

1. CDC through coordination with the city staff has changed the sequence of construction to reduce the total completion time.
2. At the suggestion of city staff, CDC has agreed to use high early strength concrete that allows a faster curing period.
3. Final revisions of the construction plans by CDC's engineers will be submitted by July 15, 2003.
4. We expect final approval of the construction plans by the City no later than August 6, 2003.
5. CDC will issue its Request for Qualifications (RFQ) to potential contractors no later than June 27, 2003.
6. CDC will issue the Request for Proposals (RFP) for construction no later than July 17, 2003.
7. Provided responsive bids are received, the award of the construction contract will occur on September 15 with the issuance of the notice to proceed on September 16, 2003.

Marketing Office
1755 C Duke Street
Alexandria, VA 22314

tel (703)739-7600
fax (703)836-5570

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8. The construction contract will include a firm completion date with penalties for late delivery.
9. CDC will propose to the City a temporary closure (three to five weeks) of the southbound lanes of Diagonal Road approaching the intersection with Duke Street. Temporary use for construction equipment may shorten the construction schedule by as much as four weeks.
10. CDC will allow a "soft" opening of the concourse, permitting pedestrian use as soon as the structure is safe for passage, before the final decorative finishes are completed.
11. CDC will fund a position to provide special City inspections and oversight of the concourse construction process from the date construction of the concourse commences to the date of the concourse's "soft" opening (the date when CDC has completed its construction obligations necessary to permit safe passage for pedestrians).

Project Construction Schedule

Based on implementation of the actions listed above by CDC and the City including the temporary closure of the southbound lanes of Diagonal Road, we project the following construction schedule for the Duke Street pedestrian concourse improvements required of Carlyle Development Corporation by condition 25 of the Carlyle Special Use Permit:

Award of Construction Contract:	September 15, 2003
Notice to Proceed:	September 16, 2003
Soft Opening for pedestrian traffic:	April 19, 2004
Restoration of normal traffic patterns on Duke Street:	May 1, 2004
Completion:	June 30, 2004

Maintenance of Pedestrian Access to and from the King Street Metro Station

1. CDC in cooperation with the Carlyle Community Council (CCC) (operator of the Carlyle TMI and existing transit shuttle) will provide a shuttle service between the King Street Metro Station and Buildings C and E of the USPTO campus. A plan for the size, number, frequency and route of additional shuttle buses will be submitted no later than October 1, 2003 to T&ES for review and approval. This plan will be reasonably designed to achieve five minute maximum peak period (both AM and PM) headways or such maximum headway as otherwise approved by the Director of T&ES. This additional shuttle service will commence in accordance with the approved plan no later than January 2, 2004. Following completion of CDC's obligation to construct the pedestrian concourse pursuant to condition 25, shuttle service shall be provided pursuant to the terms of the Carlyle TMI.

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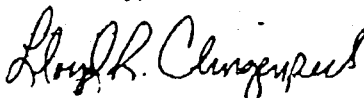
2. CDC has commenced and will continue regular coordination meetings with USPTO, LCCR and T&ES.
3. CDC will construct a bus shelter or shelters on Dulany Street for USPTO employees using the proposed shuttle service. The number, design and location of the shelters will be determined by the Director of T&ES pursuant to condition 23 of Carlyle SUP. The shelters will be installed by January 2, 2004, provided timely approvals and design specifications are given by the City.
4. CDC will submit to T&ES for review and approval a plan for barriers or similar physical measures to channel pedestrians to the Duke Street surface pedestrian crossings along the Carlyle frontage no later than September 1, 2003. Provided the city approvals are granted in time, the required improvements will be installed by December 31, 2003.
5. LCCR has agreed to complete installation of the second pedestrian crossing at Duke and John Carlyle Street no later than November 1, 2003.
6. CDC will implement a public information program, including a brochure, to educate employees commuting to Carlyle (including USPTO employees) on the status of the pedestrian concourse, the availability of safe and convenient pedestrian routes to and from transit stations, and the availability of transit incentives through the Carlyle TMP by November 15, 2003. CDC will also provide temporary signs guiding pedestrians from the King Street Metro Station to the new USPTO buildings.
7. CDC will provide a study by a qualified transportation engineer to determine whether the existing pedestrian phases of traffic signals at Duke Street/ Dulany/ Diagonal and Duke Street/ John Carlyle are sufficient to accommodate the projected additional pedestrians coming to the USPTO offices during the period prior to completion of the pedestrian concourse.

Late Completion Penalty

CDC agrees to pay to the city a penalty in the amount of \$5,000 per day in the event the improvements required of the applicant pursuant to condition 25 of the Carlyle SUP are not completed by July 1, 2004. This penalty will not be imposed for each day of delay caused by *force majeure* or by unreasonable delay caused by the city, WMATA or other governmental agencies.

This agreement shall be contingent on the City not imposing any other fines or penalties nor withholding any permits or approvals in relation to development in Carlyle solely on the basis of the delay of completion of the pedestrian concourse by December 31, 2003.

Sincerely,



Lloyd R. Clingenpeel,
Senior Real Estate Manager

June 18, 2003
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Seen and Agreed:

WREAN157481.6